

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

EDEN RODRIGUEZ,

Plaintiff,

v.

CAREFUSION CORPORATION; CARDINAL  
HEALTH, INC.; PYXIS CORPORATION;  
CARDINAL HEALTH ALARIS PRODUCTS;  
and DOES 1 through 50, inclusive,

Defendants.

Case No. 09CV2137 JM (NLS)

**ORDER GRANTING JOINT MOTION  
FOR STIPULATED PROTECTIVE  
ORDER**

[Doc. No. 7]

For good cause shown, the court **GRANTS** the parties' joint motion to enter a protective order, and enters the stipulated protective order subject to the modification in paragraph 28.

Upon agreement of counsel and deeming it just and proper to do so, it is hereby ordered that:

1. This Protective Order shall govern the use and dissemination of all information, documents, and/or materials as may be produced by the parties and/or admitted into evidence during deposition or trial within the above-captioned action.

2. Discovery in this action may involve disclosure of trade secrets, confidential research, development or commercial information, proprietary materials including manuals, business strategies, financial data, client and vendor information, marketing plans, medical information pertaining to any party, confidential employee and salary information, computer software programs,

1 and other confidential, proprietary or non-public business, technical, employee, and financial  
 2 information as is contemplated by Federal Rule of Civil Procedure 26(c)(7). This Stipulation and  
 3 Protective Order shall govern the production in this action of all documents or other information  
 4 through formal discovery procedures, including, without limitation, documents in written or  
 5 electronic form produced as initial disclosures, in response to requests for production of documents,  
 6 answers to special interrogatories, requests for admission, and deposition or other oral testimony  
 7 (collectively "Discovery Materials"). This may include but shall not be limited to correspondence,  
 8 memoranda, notes, deposition transcripts and exhibits, business plans, training materials, policies  
 9 and procedures, financial records, requisition files, personnel records, medical records, marketing  
 10 materials, third-party contracts, income tax returns, sales invoices and other sales information.

11 3. This Order is entered solely for the purpose of facilitating the exchange of documents  
 12 and information between the parties to this action without involving the Court unnecessarily in the  
 13 process. Nothing in this Order or the production of any information or documents under the terms of  
 14 this Order or any proceedings pursuant to this Order shall be deemed to have the effect of an  
 15 admission or waiver by either party on the merits of this action.

16 4. Nothing in this Protective Order shall be deemed to restrict in any manner the use by  
 17 any party of any information in its own documents and materials.

18 5. The term "counsel" or "attorney" shall mean outside counsel of record, and other  
 19 attorneys, paralegals, secretaries, and other support staff employed in the law firms identified below:

20 Law Offices of Suzy C. Moore, 4730 3<sup>rd</sup> St., Suite B, La Mesa, CA 91941

21 Wilson Turner Kosmo LLP, 550 West C St., Suite 1050 San Diego, CA 92101

22 "Counsel" or "attorney" shall also include in-house attorneys for Defendant.

23 **CONFIDENTIAL INFORMATION:**

24 6. Any document, thing, material, testimony, or other information derived therefrom,  
 25 and any other form of evidence which, in the good-faith opinion of the party providing such  
 26 discovery material ("Producing Party"), contains any trade secret or other confidential or proprietary  
 27 information or any information that involves privacy concerns regarding any third party, any party or  
 28 the employee, officer, director or representative of a party may be designated by the Producing Party

1 as "CONFIDENTIAL INFORMATION." Confidential Information, designated as such in  
2 accordance with this Stipulation and Protective Order, shall be used by the party who has  
3 propounded the discovery request seeking the Confidential Information ("Requesting Party") only  
4 for the purposes of preparation of this matter for trial and may be disclosed or made available only to  
5 persons specified in paragraph 9 herein.

6 7. Confidential Information may be identified and made subject to this Order as follows:

7 (a) with respect to documents or copies of documents provided by one party to  
8 the other, by marking the initial page and any page or pages upon which any Confidential  
9 Information appears with the legend "CONFIDENTIAL. SUBJECT TO PROTECTIVE ORDER."

10 (b) testimony or information disclosed at a deposition, conference or hearing may  
11 be designated by a party as Confidential Information by indicating on the record at the deposition,  
12 conference or hearing the specific testimony which contains Confidential Information that is to be  
13 made subject to the provisions of this Order. Alternatively, a party may designate testimony or  
14 information disclosed at a deposition or other proceeding as Confidential Information by notifying  
15 all parties in writing within thirty (30) days of receipt of the transcript (or within a shorter time as  
16 agreed by the parties in the event the deposition transcript or information cannot be received thirty  
17 (30) days prior to a hearing or conference, at which a party intends to use the transcript or  
18 information), of the specific pages and lines of the transcripts that are to be designated Confidential  
19 Information. Each party shall attach a copy of such written statement to the face of the transcript  
20 and each copy thereof in its possession, custody or control. Whether or not designation is made at  
21 the time of a deposition or other proceeding, all depositions or other transcripts shall be treated as  
22 Confidential Information from the taking of the deposition or other proceeding until within thirty  
23 (30) days of receipt of the transcript (or within a shorter time as agreed by the parties in the event the  
24 deposition transcript or information cannot be received thirty (30) days prior to a hearing, or  
25 conference at which a party intends to use the transcript or information), or until receipt of the notice  
26 referred to in this paragraph, whichever occurs sooner.

27 (c) in the case of responses to interrogatories, responses to other discovery  
28 requests, affidavits, briefs, memoranda or other papers filed with the Court, information contained

1 therein may be designated as Confidential Information by prominently marking such papers  
2 “CONFIDENTIAL”;

3 (d) tangible objects may be designated as Confidential Information by affixing to  
4 the object or its container a label or tag marked “CONFIDENTIAL. SUBJECT TO PROTECTIVE  
5 ORDER.”

6 8. Notwithstanding the foregoing, any employee, agent, advisor, representative or  
7 person affiliated with a party who is not qualified to receive Confidential Information under  
8 Paragraph 9 herein may attend a deposition or other proceeding at which Confidential Information  
9 may be disclosed. In such event, a party seeking to designate Confidential Information must  
10 designate the specific testimony or information containing Confidential Information by indicating on  
11 the record at the deposition or other proceeding that such Confidential Information is subject to the  
12 provisions of this Order. The party making such designation shall have the right to exclude such  
13 persons from the deposition or other proceeding only during the period any Confidential Information  
14 is disclosed or discussed.

15 9. Confidential Information produced pursuant to this Order to Requesting Party may be  
16 disclosed or made available by that party only to:

17 (a) the Requesting Party (and their officers, directors, managing agents or other  
18 representatives who are engaged in or are assisting in the preparation of this action for trial or other  
19 resolution, except as otherwise provided herein), provided that it has executed this Protective Order;

20 (b) the Court and its officers, any special master, referee or mediator authorized to  
21 act in this proceeding;

22 (c) counsel of record in this action and their employees or employee equivalents  
23 (e.g., contract paralegals, copy vendors, etc.) who are assisting counsel in the preparation of this  
24 action for trial or other resolution;

25 (d) independent experts or consultants retained by counsel or the Requesting  
26 Party with respect to preparation of this action for trial or other resolution, and their employees or  
27 employee equivalents who are assisting such experts or consultants with respect to the preparation of  
28 this action for trial or other resolution, subject to disclosure of the identity of such expert(s) or

1 consultant(s) to the producing party, and that person's execution of the form set forth as Exhibit A;

2 (e) court reporters and their staff, to the extent necessary to perform their duties;

3 (f) a witness at any deposition or other proceeding in this action; and

4 (g) any other person to whom the parties agree in writing.

5 10. With respect to material being designated "CONFIDENTIAL" or "CONFIDENTIAL  
6 – FOR ATTORNEYS' EYES ONLY," any person indicated on the face of the document to be its  
7 originator, author or a recipient of a copy thereof may be shown the same.

8 **ATTORNEYS' EYES ONLY:**

9 11. Any Producing Party may further designate certain discovery material or testimony  
10 which contains financial information and/or corporate ownership information of a highly  
11 confidential and/or proprietary nature or employee information of a highly confidential or private  
12 nature such as employee disciplinary matters, salary information and/or other private information as  
13 "ATTORNEYS' EYES ONLY" in the manner described in paragraphs 1 through 6, above, except  
14 that the applicable legend for such information shall be: "ATTORNEYS' EYES ONLY. SUBJECT  
15 TO PROTECTIVE ORDER." Attorneys' Eyes Only Material, and the information contained  
16 therein, shall be disclosed only to the Court, counsel for the Requesting Party (including the  
17 paralegal, clerical, and secretarial staff employed by such counsel) to the above-captioned litigation,  
18 and other persons identified in paragraph 9(d) above but shall not be disclosed to the Requesting  
19 Party itself, or to an officer, director or employee of Requesting Party, or anyone else unless  
20 otherwise agreed to in writing or ordered. The procedures regarding disclosure of Confidential  
21 Material at a deposition set forth in paragraph 7(b) shall apply to Discovery Material designated  
22 under this paragraph.

23 **GENERAL PROVISIONS**

24 12. Material designated under this Order, the information contained therein, and any  
25 summaries, copies, abstracts, or other documents derived in whole or in part from designated  
26 Confidential or Attorneys' Eyes Only Information, shall be used only for the purpose of the  
27 prosecution, defense, or settlement of this action, and for no other purpose.

1           13. A copy of this Protective Order shall be served with any subpoena or deposition  
2 notice compelling the production of documents or information from any third party.

3           14. A condition precedent to disclosure of any Confidential or Attorneys' Eyes Only  
4 Information to any experts or consultants as provided for in paragraph 9(d) or any Confidential  
5 Information to any witness provided for pursuant to paragraph 9(f) or the person whom the parties  
6 agree may receive information under paragraph 9(g) is that person must: acknowledge receipt of this  
7 Order; agree to be bound thereby; agree to use such information and materials solely for this  
8 litigation; agree not to disclose any such information or materials to any other person, firm, or  
9 concern; and agree never to use the information, directly or indirectly, in competition with the party  
10 that disclosed it nor allow any other person to do so.

11           15. Each expert or consultant to whom Confidential or Attorneys' Eyes Only Information  
12 is to be provided pursuant to paragraph 9(d), each witness to whom Confidential Information is to be  
13 provided pursuant to paragraph 9(f) and each person to whom the parties may agree pursuant to  
14 paragraph 9(g) shall execute a declaration acknowledging the foregoing in the form set forth in  
15 Exhibit A. Counsel for the party obtaining a person's signature to Exhibit A shall retain the original  
16 signed and dated acknowledgment.

17           16. The parties agree, pursuant to the procedure set forth in ¶ 25 of this Order, to seek  
18 leave of Court to file all documents and materials related to Discovery motions or proceedings under  
19 seal. If the Court grants leave, all documents and materials filed with the Court in matters related to  
20 discovery motions or proceedings, including, but not limited to, deposition transcripts, exhibits,  
21 discovery responses, briefs or memoranda, which comprise or contain Confidential or Attorneys'  
22 Eyes Only Information shall be filed with the Court in sealed envelopes or other appropriately sealed  
23 containers, complying with all applicable Rules of Court, on which shall be endorsed the title of this  
24 action, an indication of the nature of the contents, the identity of the party filing the materials, the  
25 phrase "CONFIDENTIAL," and a statement the materials in the sealed envelope or container are  
26 "TO BE FILED UNDER SEAL PURSUANT TO COURT ORDER IN THIS ACTION DATED  
27 \_\_\_\_\_."

1           17. In all matters other than discovery motions or proceedings, the party seeking to  
 2 submit Confidential or Attorneys' Eyes Only Information will seek an order of this Court permitting  
 3 that party to file materials under seal as described in ¶ 25 herein, then will lodge any documents or  
 4 materials which comprise or contain Confidential or Attorneys' Eyes Only Information with the  
 5 Court in sealed envelopes or other appropriately sealed containers, complying with all applicable  
 6 rules of Court, on which shall be endorsed the title of this action, an indication of the nature of the  
 7 contents, the identity of the party filing the materials, the phrase "CONFIDENTIAL," and a  
 8 statement the materials in the sealed envelope or container are "LODGED CONDITIONALLY  
 9 UNDER SEAL PURSUANT TO COURT ORDER IN THIS ACTION DATED \_\_\_\_\_."

10 That party shall personally serve the opposing party with the lodged documents on the date of any  
 11 lodgment. The party will either contemporaneously move to seal these records or provide written  
 12 notice to the Producing Party that it does not intend to bring such a motion. The party that  
 13 designated the Confidential or Attorneys' Eyes Only Information will then have 10 court days to  
 14 seek an order of the Court, or an order extending time to seek the same, that these documents or  
 15 material be filed under seal. Any motion to seal shall comply with all applicable rules of Court. If  
 16 the party who initially designated the Confidential or Attorneys' Eyes Only Information does not  
 17 object to its being filed in the Court's public record, it will notify counsel for the opposing party.  
 18 Upon such notification, or if no notification is provided within the time set forth above, the filing  
 19 party may then file with the Court the documents or material previously lodged.

20           18. Confidential or Attorneys' Eyes Only Information obtained from a Producing Party  
 21 pursuant to pretrial discovery in this action, may be used and disclosed only for purposes of this  
 22 action. No person or party shall make any other use of any such Information, including, but not  
 23 limited to, use for commercial or competitive purposes or use in any other legal proceeding, except  
 24 as permitted by a Court order. All Confidential Information shall be held in confidence by those  
 25 inspecting or receiving it. Counsel for each party, and each person receiving Confidential  
 26 Information, shall take reasonable precautions to prevent the unauthorized or inadvertent disclosure  
 27 of such information. If Confidential Information is disclosed to any person other than a person  
 28 authorized by this Order, the party responsible for the unauthorized disclosure must immediately



1 bring all pertinent facts relating to the unauthorized disclosure to the attention of the other parties  
2 and, without prejudice to any rights and remedies of the other parties, make every effort to prevent  
3 further disclosure by the party and by the person(s) receiving the unauthorized disclosure.

4 19. Nothing herein shall be construed as an agreement or admission: (a) that any  
5 information, document or the like, designated as Confidential or Attorneys' Eyes Only Information  
6 is in fact confidential or a trade secret; or (b) with respect to the competency, relevance, materiality,  
7 or admissibility of any such information, document or the like.

8 20. At any stage of these proceedings, any party may object to a designation of the  
9 materials as Confidential Information. The party objecting to confidentiality shall notify, in writing,  
10 counsel for the designating party of the objected-to materials and the grounds for the objection. If  
11 the dispute is not resolved by stipulation between the parties within ten (10) business days of receipt  
12 of such a notice of objections, the objecting party may move the Court for a ruling on the objection.  
13 The materials at issue shall be treated as Confidential Information, as designated by the designated  
14 party, until the Court has ruled on the objection or the matter has otherwise been resolved.

15 21. The inadvertent or unintentional failure by a Producing Party to designate specific  
16 documents or materials as containing Confidential or Attorneys' Eyes Only Information shall not be  
17 deemed a waiver in whole or in part of a party's claim of confidentiality as to such documents or  
18 materials. Upon notice to the receiving party of such failure to designate, the receiving party shall  
19 cooperate to restore the confidentiality of the inadvertently disclosed information, without prejudice.

20 22. Nothing herein shall prevent disclosure beyond the terms of this Order if the  
21 Producing Party consents in writing to such disclosure, or if the Court, after notice to all affected  
22 parties, orders such disclosure.

23 23. Upon final termination of this action, including any and all appeals, this Court and  
24 counsel for each party shall, upon request of the producing party, return all Confidential Information  
25 to the party that produced the information, including any copies, excerpts, and summaries thereof, or  
26 shall destroy same at the option of the receiving party, and shall purge all such information from all  
27 machine-readable media on which it resides within 90 days of the final termination of this action.  
28 Notwithstanding the foregoing, counsel for each party may retain all pleadings, briefs, memoranda,



1 motions, and other documents filed with the Court that refer to or incorporate Confidential  
2 Information, and will continue to be bound by this Order with respect to all such retained  
3 information. Further, attorney work product materials that contain Confidential Information need  
4 not be destroyed, but if they are not destroyed, the person in possession of the attorney work product  
5 will continue to be bound by this Order with respect to all such retained information.

6         24. The restrictions and obligations herein shall not apply to any information that: (a) the  
7 parties agree should not be designated as Confidential Information; (b) the parties agree, or the Court  
8 rules, is already public knowledge; (c) the parties agree, or the Court rules, has become public  
9 knowledge other than as a result of disclosure by the receiving party, its employees, or its agents in  
10 violation of this Order; or (d) has come or shall come into the receiving party's legitimate knowledge  
11 independently of the production by the designating party. Prior knowledge must be established by  
12 pre-production documentation.

13         25. In the event a party wishes to have documents filed under seal, that party shall first  
14 seek an order from the Court granting permission to file said material under seal in accordance with  
15 the United States District Court, Southern District of California Local Rule 79.2. That party shall  
16 also take all reasonable steps to preserve the continued confidentiality of that material. Subject to  
17 public policy, and further court order, nothing shall be filed under seal, and the court shall not be  
18 required to take any action, without separate prior order by the Judge before whom the hearing or  
19 proceeding will take place, after application by the affected party with appropriate notice to  
20 opposing counsel. If the Court grants a party permission to file an item under seal, a duplicate  
21 disclosing all non-confidential information shall be filed and made part of the public record. The  
22 item may be redacted to eliminate confidential material from the document. The document shall be  
23 titled to show that it corresponds to an item filed under seal, e.g., "Redacted Copy of Sealed  
24 Declaration of John Smith in Support of Motion for Summary Judgment." The sealed and redacted  
25 documents shall be filed simultaneously.

26         26. The restrictions and obligations herein shall not be deemed to prohibit discussions of  
27 any Confidential Information with anyone if that person already has or obtains legitimate possession  
28 thereof.

1           27.     Transmission by facsimile is acceptable for all notification purposes herein.

2           28.     This Order may be modified by agreement of the parties, subject to approval by the  
3 Court. Further, the Court may modify the Protective Order in the interests of justice or for public  
4 policy reasons.

5           29.     This Order has been entered into by the parties to facilitate discovery and production  
6 of relevant evidence in this action. Neither the entry into this Stipulation nor the designation of any  
7 information or document, nor the failure to make such designation shall constitute evidence with  
8 respect to any issue in this action.

9           30.     This Order is without prejudice to the right of the parties to this litigation to seek  
10 relief from the Court, upon good cause shown, from any of the restrictions provided above or to  
11 impose additional restrictions on the disclosure of any information or material produced.

12           31.     This Stipulation and Protective Order shall not apply to the introduction or  
13 presentation of evidence at the trial of this matter. The parties agree to meet and confer regarding a  
14 procedure at trial for maintaining the confidentiality of Confidential and Attorneys' Eyes Only  
15 information and, if necessary, seek the Court's assistance for the same. The provisions of this  
16 protective order are subject to further court order, based upon public policy and other considerations.

17           We hereby stipulate to the entry of the foregoing Order.

18           **IT IS SO ORDERED.**

19           Dated: January 19, 2010



\_\_\_\_\_  
Nita L. Stormes

U.S. Magistrate Judge

**ATTACHMENT A**

**AGREEMENT TO COMPLY WITH STIPULATED PROTECTIVE ORDER**

I declare under penalty of perjury under the laws of the United States of America and the State of California that I have read and agree to comply with and be bound by the terms of the Stipulated Protective Order entered in Eden Rodriguez v. CareFusion Corporation, et al., Southern District of California Case No. 09CV2137 JM (NLS). I hereby consent to the jurisdiction of said Court for purposes of enforcing this Order.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title